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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/964,999 | 09/27/2001 | Sanaa F. Abdelhadi | AUS920010901US1 | 2723 |

46073 7590 11/13/2006

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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2157

DATE MAILED: 11/13/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/964,999
Filing Date: September 27, 2001
Appellant(s): ABDELHADI ET AL.

MAILED

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Technology Center 2100

Volel Emile (reg no. 39,969)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 25, 2006 appealing from the Office action mailed July 25, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1,3-6,8-11,13-16 and 18-20 have been finally rejected under 35 USC 102(e) as being anticipated by Meyer (US Patent No 6,701,364), in Office Action dated July 25, 2005.

Claims 2,7,12,17 have been finally rejected under 35 USC 103(a) as being unpatentable under Meyer (US Patent No 6,701,364) in view of Johnson (US Patent No 6,397,245), in Office Action dated July 25, 2005.

Claims 3,4,8,9,13,14 and 19 are currently cancelled in the present Appeal Brief.

Claims 5,10,15 and 20 are currently amended in the present Appeal Brief to correct their dependency from a cancelled claim to a pending claim.

The pending claims are: 1,2,5-7,10-12,15,16 and 20

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The brief is deficient because applicant has not identified every means plus function of each dependent claim. Furthermore applicant has not set forth the structure described in the specification as corresponding to each of the dependently claimed function.

The brief is further deficient because applicants explanation of the subject matter defined in independent claim 11 is without foundation. Applicant states that the apparatus of claim 11 includes "the code for pinging the systems and for taking any system that did not respond to the ping off the list...". There is no mention in the claims of taking systems off of a list. There is not even a mention of a "list" in the claims. Therefore the apparatus of claim 11 cannot include any interpretation of a list, or of taking systems off of a list.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

The appellant's statement of the grounds of rejection, regarding claims 1,2,6,7,11,12,16 and 17, to be reviewed on appeal is correct.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. Claims 5, 10, 15 and 20 are rejected under 35 U.S.C. 103(a) as being

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unpatentable over Meyer (US Patent No 6,701,364) in view of Johnson et al (US Patent No 6,397,245).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Meyer (US Patent No 6,701,364), and Johnson et al (US Patent No 6,397,245).

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 11 and 16 rejected under 35 U.S.C. 102(e) as being anticipated by

Meyer (US Patent No 6,701,364).

In reference to claims 1,6,11 and 16, Meyer teaches a method, a program product, an apparatus and a system respectively for executing remote commands on remote computer systems comprising steps of:

entering a remote command in a local command interface (column 5 lines 32-41), said command to be executed by said computer systems (column 5 lines 32-41, Meyer discloses diagnostic control commands are sent from a browser);

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automatically determining each of said computer systems accessibility (column 6 lines 1-15, Meyer discloses attempting to establish a communication path between a controlling PC and remote PC's by sending HTTP requests); and

dispatching said command only to the computer systems that are determined to be accessible (column 7 lines 8-17, Meyer discloses that once a communication path is established, then control commands are sent).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2,7,12 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer (US Patent No 6,701,364) in view of Johnson et al (US Patent No 6,397,245).

In reference to claims 2,7,12 and 17, Meyer teaches the a method, a program product, an apparatus and a system of claims 1,6,11 and 16 respectively. Although Meyers teaches listening and checking for accessibility (column 5 lines 50-65 and column 6 lines 55-65), Meyer fails to explicitly teach wherein the step of automatically determining computer systems accessibility includes the step of pinging each of said computer systems. However, Johnson discloses that when diagnosing a network device over a network connection, Ping may be used to show that the network device is accessible (column 1 lines 51-58 and column 7 lines 27,28). Johnson's statement of a network device being "Pingable" means that the Ping utility can be used to determine accessibility.

It would have been obvious for one of ordinary skill in the art to modify Meyer by automatically determining computer systems accessibility includes the step of pinging each of said computer systems as per the teachings of Johnson because Ping is a well-known utility used by network administrators for testing and diagnosing accessibility of a network device over a network connection.

In reference to claims 5,10,15 and 20, Meyer teaches the a method, a program product, an apparatus and a system of claims 2,7,12 and 17 respectively, further including the step of automatically re-dispatching the command for execution to a computer system that failed to execute the command successfully and was corrected (column 6 lines 50-64 and column 9 lines 53-65).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses the replies individually.

1. Regarding claims 1,6,11 and 16, Appellant argues that “*Meyer does not teach the steps of entering a remote command in local a command interface, automatically determining each of said computer systems accessibility, and dispatching said command only to the computer systems that are determined to be accessible*”.

In reply, Meyer does teach entering a remote command in a local command interface (column 5 lines 32-41, Meyer discloses a user may type or click commands into a browser), automatically determining each of said computer systems accessibility (column 6 lines 1-15, Meyer discloses attempting to establish a communication path between a controlling PC and remote PC's by sending HTTP requests), and dispatching said command only to the computer

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systems that are determined to be accessible (column 7 lines 8-17, Meyer discloses that once a communication path is established, then control commands are sent).

2. Regarding claims 1,6,11 and 16, Appellant further argues Meyer and states that: *“a user, at the controlling computer, has to manually (and not automatically) attempt to connect with the remote computer...”*.

In reply, Applicant is implicitly arguing that Meyer does not teach “automatically determining each of said computer systems accessibility”.

Firstly, the claims do not mention any exclusion of user interaction when attempting to determine each of said computer systems accessibility. On the contrary, the claims explicitly state: “entering a remote command in a local command interface”, which hardly qualifies as ‘automatically’ when put in the context of applicants argument.

Secondly, Applicant's claim language is broad and fails to delimit the extent of automation. Notwithstanding the above reply to argument, the claim can be interpreted to mean that after the command is entered into the local interface, the HTTP request of Meyer is transmitted to the remote computer to determine accessibility. The HTTP request itself is what automatically determines accessibility of the computer systems.

3. Regarding claims 2,7,12 and 17, Appellant argues: *“why, then, would someone incorporate the step of pinging described by Johnson II et al. to determine whether a remote computer system is accessible absent some specific teachings in the reference to do so?”*.

In reply, the Johnson reference explicitly states that the Ping utility can be used to determine a network device to be “Pingable” (column 1 lines 51-58 and column 7 lines 27,28). Johnson’s statement of a network device being “Pingable” means that the Ping utility can be

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used to determine accessibility. The use of this utility is well known to network administrators and is a useful tool for diagnosing network devices and connections.

4. Regarding claims 2,7,12 and 17, Appellant further argues: "*if the HTTP request is replaced how would the resulting combination perform the task in the claimed invention?*".

In reply, the claims do not mention anything about HTTP requests and therefore applicants arguments are moot. In spite of this, it is the Meyer reference that is used to show determining accessibility by sending HTTP requests. And it is the Johnson reference that is used to show that Ping is just another way of determining accessibility. It is obvious to replace the HTTP requests of Meyer with the Ping of Johnson for the purpose of using a well-known utility used by network administrators for testing and diagnosing accessibility of a network devices.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

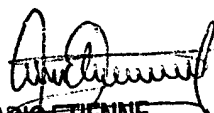
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